

EXECUTIVE SECRETARIAT

Routing Slip

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3	EXDIR				
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9	Chm/NIC				
10	GC			✓	
11	IG				
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19	C/IPD/OIS				
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Remarks:

STAT

Executive Secretary

6/23/82

Date

3637 (10-81)

NSC review completed.

THE WHITE HOUSE
WASHINGTON

Executive Registry
82-3359

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: June 22, 1982 NUMBER: 072777CA DUE BY: n/a

SUBJECT: Guidelines for Allocation and Payment of Expenses of
Senior Administration Officials

	ACTION	FYI	ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Baker	<input type="checkbox"/>
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>
State	<input type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>	Harper	<input type="checkbox"/>
Attorney General	<input type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Commerce	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Labor	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Transportation	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
Counselor	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input type="checkbox"/>	CCOT/Gunn	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input type="checkbox"/>	CCFA/Boggs	<input type="checkbox"/>
-----			CCHR/Carleson	<input type="checkbox"/>
CEA	<input type="checkbox"/>	<input type="checkbox"/>	CCLP/Uhlmann	<input type="checkbox"/>
CEO	<input type="checkbox"/>	<input type="checkbox"/>	CCNRE/Boggs	<input type="checkbox"/>
OSTP	<input type="checkbox"/>	<input type="checkbox"/>	-----	<input type="checkbox"/>
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REMARKS: The attached is for your information.

TO: DIRECTORY CASEY
ATTN:

STAT

F-207

NSC review completed.

RETURN TO:

 Craig L. Fuller
 Assistant to the President

 Becky Norton Dunlop
 Director, Office of

THE WHITE HOUSE
WASHINGTON

June 10, 1982

MEMORANDUM FOR THE CABINET

FROM: FRED P. FIELDING *[Signature]*
COUNSEL TO THE PRESIDENT

SUBJECT: Guidelines for Allocation and Payment of Expenses of Senior Administration Officials

This memorandum responds to numerous requests for advice with respect to the payment of expenses associated with travel by "senior Administration officials." 1/ Such travel may often include both official events, undertaken as part of the individual's official role as a spokesman for Administration policy, and purely political events, undertaken for partisan purposes in order to advance the interests of the Republican party or its candidates for office. We have been asked to articulate the legal principles governing the allocation and payment of costs associated with such travel.

General Legal Principles

During non-Presidential election campaign periods, applicable law and regulations do not provide a specific method for allocating the costs of mixed official and political travel by individuals other than candidates. 2/ Neither is there a precise definition for distinguishing between "official" and "political" functions. As a result, guidelines during this period are based on general legal principles, to some degree on policies established over a period of years by several Administrations, and on guidance from Federal Election Commission opinions and actions.

1/ "Senior Administration officials" for the purposes of this memorandum is defined to include those federal officials appointed by the President with the advice and consent of the Senate.

2/ Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis. 11 C.F.R. § 106.3(c)(1). Additionally, 11 C.F.R. § 9004.7 provides a set of rules concerning the allocation of travel expenses during a Presidential or Vice Presidential campaign.

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When considering payment of expenses associated with travel by senior officials, two major principles governing the use of appropriated funds must be borne in mind. First, appropriated funds may be spent only for the purposes for which they have been appropriated. 31 U.S.C. § 628; 52 Comp. Gen. 504 (1972); 50 Comp. Gen. 534 (1971). Thus, funds appropriated for the official functioning of federal Departments or Agencies may be used for travel expenses only if the travel is reasonably related to an official purpose. If, however, there is no reasonable connection between the expense incurred and the official purposes to be served by an appropriation -- as, generally speaking, there would not be when an expense is incurred purely for partisan political purposes -- official funds may not be used to pay the expense.

The second basic principle is that, in general, official activities should be paid for only from funds appropriated for such purposes, unless Congress has authorized the support of such activities by other means. Stated another way, although appropriated funds should not be used for non-official purposes, it is equally true that outside sources of funds may not be used to pay for official activities. This latter principle, which prevents the unauthorized augmentation of appropriations, has been recognized by the Comptroller General on numerous occasions. 3/

Political and Official Travel — Defined

Thus, the cost of travel in conjunction with wholly official activity must be paid from appropriated funds and expenses for travel in conjunction with wholly political activity will be paid from sources other than appropriated funds. In those instances where the same travel costs are incurred in conjunction with official and political activity, there should be a proration of expenses.

It is important at the outset to attempt to identify what is meant by "political" -- as opposed to "official" -- activities of government officials. It will be necessary to determine on a case-by-case basis whether an expense is official or political in character. There is unfortunately no single litmus test for making such judgments. Indeed, many events could be characterized properly as either political or official or both. Therefore, in making this determination the persons

3/ See, e.g., 46 Comp. Gen. 689 (1967); 23 Comp. Gen. 694 (1944); 17 Comp. Dec. 712 (1911); 9 Comp. Dec. 174 (1902).

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most familiar with the facts of a particular trip will have to assess all of the circumstances involved and apply a large measure of common sense. There are, however, two major variables concerning the source of the expense to be borne in mind: the nature of the event involved, and the nature of the individual involved. Either, or both, of these indicia may be useful in a particular case in determining whether a particular expense should be considered official or political.

Appearing at party functions, fundraising, and campaigning for specific candidates are the principal examples of travel which should be considered political. 4/ On the other hand, travel for inspections, meetings, non-partisan addresses, and the like ordinarily should not be considered "political" travel even though it may have partisan consequences or concern questions on which opinion is politically divided.

You should be aware that a substantially partisan political speech at an event which might otherwise be considered "official," such as a Chamber of Commerce event, may necessitate applicable expenses to be paid from sources other than appropriated funds. In determining whether activity is official or political, all relevant factors should be considered, including but not limited to the sponsor of the event, the group or organization being addressed, other participants, whether the speech being delivered is partisan and political in nature, or whether it is a factual presentation or defense of the Administration's positions on the issues.

4/ Expenses paid by the Republican National Committee ("RNC") for travel by any individual in support of specific identifiable federal candidates are in-kind contributions to, or coordinated expenditures for, the candidates and would apply against the RNC's contribution and expenditure limitations for those federal candidates. If a trip or a portion thereof is on behalf of a specific identifiable federal candidate, the estimated share of such expenses ~~which are reasonably allocable~~ to a particular campaign must be paid by check or similar draft and in advance by the appropriate campaign committee in order that appropriated funds not be used for political purposes and that the RNC not inadvertently violate contribution or expenditure limitations for individual candidates. Because of these restrictions, the RNC cannot and will not assume financial responsibility for political trips of which it has not had advance notice, an opportunity to coordinate and to organize appropriate expense payments. Political or mixed official/political travel which contains even a single candidate-related event must be closely coordinated with the RNC well in advance of the scheduled trip.

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A speech before a non-partisan group such as the Chamber of Commerce is not partisan or political in nature if it contains no express advocacy of the election or defeat of candidates for public office and no direction that a particular political party's candidates be supported in an election campaign.

There clearly is much room for discretion in determining whether an event giving rise to an expense is political or official. At bottom, the question is a factual one that can only be answered by those most familiar with the particular facts of a given situation. Nonetheless, in general, if the purpose of an event on a trip is to promote the partisan aims of the Republican party or candidates of that party, then expenses incurred in performing the event would generally be political in character.

An additional variable that may, in some circumstances, determine the character of a particular expense incurred on a trip is the nature of the individual whose activity generates the expense. There are some individuals who, in particular situations, are on a trip for inherently official purposes. Expenses incurred by them should generally be viewed as official. For instance, there are some persons whose official duties require them to be with a Cabinet member, whether or not the Cabinet member himself is on official business. This group may include security agents responsible for his protection, a press spokesman or an executive assistant. Expenses incurred during travel with a member of the Cabinet by this group of individuals should be considered official, regardless of the character of the event that may be involved in a given trip. I would, therefore, strongly recommend that the number of Department or Agency official personnel accompanying a senior Administration official on a purely political trip be limited to one or possibly two individuals whose services are essential to the performance of the senior official's duties.

If a trip, or portion thereof, by a senior Administration official is for "personal" reasons -- i.e., neither "official" nor "political" -- any expenses incurred must be paid from other than appropriated funds. If an individual or entity other than the Administration official is intending to pay the latter's personal travel expenses, applicable conflict of interest laws and regulations must be consulted to determine whether such payment is sanctioned. See Executive Order 11222, May 8, 1965, 3 C.P.R. § 100.735, and 5 C.P.R. § 100.735.

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Allocation of Expenses

In our view, an approach which attempts in good faith to apportion the costs of a trip on the basis of a reasonable division between the time spent on political activities and the time spent on official activities is a reasonable and a legal resolution of the underlying problems. What has come to be known as a "hard-time" formula should be used to allocate "mixed" trips, i.e., trips which combine official and political activity, unless the application of such a formula to a trip would result in an inequitable charge to the government. 5/

It should always be remembered that allocation of expenses would be appropriate only with respect to expenses associated with individuals whose official roles permit them to perform political functions, and only when those individuals are on a trip that itself is not entirely political or wholly official in nature.

Prorating the cost of air travel on mixed official/political trips may be accomplished through a formula based on the amount of time actually spent by Administration spokesmen in meetings, receptions, rallies and similar activity. Time spent in actual travel, private study, or rest and recreation will not be included in the computation. The formula is as follows:

$$\frac{\text{Time spent in official meetings, receptions, etc.}}{\text{Total activity time}} + \frac{\text{Time spent in political meetings, receptions, rallies}}{\text{Total activity time}} = \frac{\text{Total activity time}}{\text{Total activity time}}$$

$$\frac{\text{Time spent in official activity}}{\text{Total activity time}} = \frac{\text{Percentage of trip that is official}}{\text{Total activity time}}$$

$$\frac{\text{Time spent in political activity}}{\text{Total activity time}} = \frac{\text{Percentage of trip that is political}}{\text{Total activity time}}$$

The percentage figure that represents the political portion of the trip is then multiplied by the amount that would be reimbursed to the government if all of the travel was political. The product of that calculation represents the amount to be reimbursed to the government.

5/ Applicable law and regulations require "candidate" travel in both the primary and the general election campaigns to be allocated on a "hypothetical trip" basis. See 11 C.F.R. § 106.3.

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In the event that a minor, clearly "incidental" percentage of the activity on a mixed trip is devoted to either official or political activity, the entire trip should be treated as if it was wholly of the type represented by the substantial figure. The balance would be treated as de minimis and need not be reimbursed as political or charged as official.

Normally the allocation formula is applied to all of the relevant costs of a mixed trip. However, as previously noted, there may be occasions when application of the formula to all costs of a total trip may not be equitable to the government. For example, if an Administration official spent the first four days of a five day trip doing only political campaign-related events and on the fifth day did only official events, it would not be equitable for the government to pay a percentage of each hotel bill or even for air travel if there was a substantial amount of travel during the first four days.

Each trip must be analyzed based on the circumstances of that trip, and while the goal is an equitable allocation, you must avoid the situation in which the government pays a disproportionately large share of the cost of a particular trip as a result of the political activity. Any question should be decided in favor of charging the government less and the political event or campaign committee more.

Expenses that are associated specifically with a political activity and not with any official activity shall be treated as political, and expenses associated specifically with an official activity and not with any political activity shall be treated as official. For such expenses, e.g., a sound system rented for a single event, there shall be no allocation between official and political funds.

In allocating the costs of travel other than air travel, the allocation formula should be applied to any government maximum for that type of expenditure. For example, if on a mixed trip (50% official and 50% political) a government employee is only entitled to \$23 per day for food on a wholly official trip, the government share would be 50% of \$23, not 50% of the actual amount spent.

The cost of air travel on a mixed trip may be paid for in one of several ways. First, if the political sponsor provides the ticket for the entire trip, it may be accepted and used by the official. Then, upon completion of the travel and settlement of the official's travel claim, the political

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sponsor must be immediately reimbursed for the official portion of the trip. In no case should the government ever pay more for official travel than the official government rate. Second, based on an estimated, advance allocation of the cost of air travel between the official and political portions of the trip, the Department could issue a Government Travel Request or a travel advance in cash covering that portion of the trip that pertains to the Department's official business. The balance of the airfare would be paid for in advance by the political sponsor by a check issued to the air carrier. Third, the traveling official may purchase the tickets with personal funds or credit cards and subsequently collect the properly allocated reimbursement from the Department and the group sponsoring the political event.

Where the scheduling is such that it is functionally impossible for travel expenses on a particular trip to be readily segregated -- i.e., where there are numerous political and official events in a given city -- a figure which represents the total amount of allocable expenses may be paid by the government either by reimbursing the political sponsor or by issuing a ticket or tickets the total value of which would equal the government's allocable share. In any event, it is essential that the details of the mixed trip be worked out well in advance by the traveling official with the appropriate Agency staff, the RNC and the political sponsor. It is imperative that detailed records of the trip be kept.

Hatch Act Restrictions

In determining whether a federal employee may or may not perform activities during a trip or during advance work for a trip, the first question to ask is whether the activity is official or political. 6/ If it is official, then it is necessary to ask whether the activity is within the scope of the employee's official duties. If so, ~~then~~ the employee may perform the activity and be paid from appropriated funds. We note that there is a group of persons whose activities are always official regardless of the type of trip involved (i.e., the Secret Service). On the other hand, if an activity to be performed on a trip or during advance work is political in nature, then it is necessary to ask whether the employee is authorized to perform such activity. A federal employee covered by the Hatch Act is in general prohibited from engaging

6/ This inquiry is governed by the tests set forth earlier in the guidelines for determining when a trip or activity is political or official.

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in political activity. See 5 U.S.C. § 7324. It follows from this that an employee covered by the Hatch Act must perform official activities that are part of the employee's official responsibilities. In such a case, the employee's expenses cannot be paid for with political funds.

As stated previously, any employee of the government may provide to a Cabinet or sub-Cabinet member those services which are essential to his official functions whether the trip is official or political. Those services would ordinarily include full provision for the comfort and safety of the party: communications; clerical, logistical and administrative support; assistance in the management of paperwork and records of decisions.

White House staff members are exempt from the provision of the Hatch Act prohibiting federal employees from taking an active part in political management or in political campaigns; and, thus may engage in partisan political activity. All persons detailed to the White House from other Agencies remain subject to all provisions of the Hatch Act.

Persons employed by certain other Agencies in the Executive Office of the President, such as the Office of Management and Budget and the Office of Policy Development, are also "hatched" and may not take an active part in partisan campaign activity. Consultants, experts and others employed on an intermittent basis by these Agencies are "hatched" on days on which they receive compensation from these Agencies.

All other government employees, including Schedule "C" employees, are covered by the prohibition against political activity except for those individuals who are appointed by the President with the advice and consent of the Senate.

"Hatched" employees may participate in the political process in limited ways. They are permitted to: register and vote; make a financial contribution to a party or candidate; express their opinion on political subjects; wear campaign buttons or display bumper stickers; be a member of a political party or organization; attend (but not as a delegate) a political convention; attend a fundraiser or campaign event; and sign a nominating petition.

Employees covered by the Hatch Act's prohibition of political activity may not: take an active part in the management of a political campaign; be a partisan candidate; serve as an officer of a political organization or campaign; organize a political organization or club; solicit, receive, handle or disburse political contributions; sell tickets to, organize

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or actively participate in any political fundraising activity; solicit votes for or against a candidate; serve as a party or candidate challenger or pollwatcher; drive voters to the polls for a candidate or party; endorse or oppose a candidate in a political advertisement, broadcast, or campaign literature; serve as a delegate or alternate to a political convention; organize or actively participate in the activities of a political convention; serve on a standing committee of a political convention; or circulate a candidate nominating petition.

Attached hereto are guidelines setting forth in summary fashion the basic legal and policy considerations applicable to travel by senior Administration officials. This memo and the attached "Summary Guidelines" do not cover every conceivable issue. If specific questions arise, you should consult counsel at your respective Departments and Agencies.

Attachment

June 10, 1982

SUMMARY GUIDELINES

General Legal Principles

1. Appropriated funds and government resources should not be used for partisan political purposes.
2. The cost of political travel by Administration officials may not be paid from appropriated funds nor may government credit be used for this purpose.
3. Transportation and related travel expenses on a wholly political trip must be paid by the sponsoring political group or campaign committee.
4. Transportation and related travel expenses on a "mixed" trip -- i.e., one that contains both official and political events -- should be reasonably allocated between the government and the sponsoring political group or campaign committee.
5. Only those Administration officials who are not "hatched" may engage in partisan political or campaign activity. Outside of the White House, only Presidential appointees subject to Senate confirmation are not "hatched."

Political Travel

1. Unless traveling with the President or Vice President, Government aircraft shall not be used on wholly political trips. /* (If specific circumstances surrounding the official duties of a ~~traveler~~ suggest the need to use a government aircraft on a particular political trip, such use must be approved in advance by the Office of the Counsel to the President.)

/* Separate guidelines have been distributed concerning travel by the President and Vice President.

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Political Travel - cont'd.

2. All transportation and related travel expenses must be paid by the political sponsor or campaign committee. Government Travel Requests ("GTR's"), government travel advances and government credit cards must not be used. Any bills from providers of transportation, housing or other expenses should be sent directly to the political sponsor or campaign committee, not the government Department or Agency.

If such bills are received by an Agency, the bill should immediately be forwarded to the appropriate political sponsor or campaign committee and a letter sent to the vendor from the Department or Agency, noting that the bill is not a government obligation and that it has been forwarded to the appropriate political sponsor or campaign committee.

3. Expenses paid by the Republican National Committee ("RNC") for travel by any individual in support of specific identifiable federal candidates are in-kind contributions to, or coordinated expenditures for, the candidates and would apply against the RNC's contribution and expenditure limitations for those federal candidates. If a trip or a portion thereof is on behalf of a specific identifiable federal candidate, the estimated share of such expenses which are reasonably allocable to a particular campaign must be paid by check or similar draft and in advance by the appropriate campaign committee in order that appropriated funds not be used for political purposes and that the RNC not inadvertently violate contribution or expenditure limitations for individual candidates. Because of these restrictions, the RNC cannot and will not assume financial responsibility for political trips of which it has not had advance notice, an opportunity to coordinate and to organize appropriate expense payments. Political or mixed official/political travel which contains even a single candidate-related event must be closely coordinated with the RNC well in advance of the scheduled trip.
4. Department or Agency schedulers who are "hatched" may handle the logistics of their principal's participation in political and campaign-related events; however, they should not do anything to assist in organizing or setting up the political event.

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Political Travel - cont'd:

5. Principals are discouraged from taking "hatched" staff members with them on wholly political trips. However, if it is deemed necessary, political or "hatched" staff members may accompany the principal solely to provide liaison with the principal's office in Washington, D.C. and to handle such matters of an official nature that may arise during the trip. In addition, the principal may be accompanied by any regular security personnel. The expenses of such individuals should be paid by the government since the "hatched" person is only engaging in official duty.
6. Government vehicles shall not be used for local travel on wholly political trips. Ground transportation should be provided by the political sponsor or campaign committee.
7. Administration officials shall use only commercial or commercial charter aircraft and are not permitted to fly in corporate-owned aircraft without prior approval of the Counsel to the President.

Mixed Official/Political Travel

1. All costs of mixed travel (transportation, lodging, meals, etc.) must be allocated between the government and the political sponsor or campaign committee. Close questions should be decided on the side of charging the political entity more and the government less.
2. In an instance where a traveler sets out on an official trip, wholly paid for by the government, and during the trip adds events that are political or campaign-related, appropriate reimbursement must be made to the government at the earliest possible time on the basis of the changed circumstances or mistake.
3. Commercially procured air travel on mixed trips may be paid for in either of the following ways:
 - a) the traveler purchases his or her ticket with personal funds or credit and collects the properly allocated reimbursement from the government and the campaign committee;
 - b) an estimated allocation is made of the cost of travel prior to the trip based on the proposed schedule of the traveler and a GTR is issued for the estimated government portion of the cost

Mixed Official/Political Travel - cont'd.

or a ticket is issued the total value of which would equal the government's allocable share. The balance of the cost of the ticket must be paid with the funds or credit of the political sponsor. If this method of payment is used, the government's share should be conservative to avoid the need to reimburse the government after the trip.

4. During the primary campaign period, applicable law and regulations do not provide a specific method for allocating the costs of mixed official/political travel by individuals other than candidates. Neither is there a precise definition for distinguishing between official and political functions. As a result, an allocation system has been devised based on general legal principles, to some degree on policies established over a period of years by several Administrations, and guidance from Federal Election Commission opinions and actions. It consists of a "hard-time" formula and may be used to allocate "mixed" trips, i.e., trips which combine official and political activity. */
5. Government or Agency personnel who are "hatched" may advance the official events on a mixed trip, but must not do anything to assist in organizing or setting up political or campaign-related events on a mixed trip. However, they may be fully involved in arrangements for the official events on the trip. Department and Agency schedulers who are "hatched" may handle the logistics, including security and communication functions of their principal's participation in political events.
6. All expenses of a "hatched" person properly accompanying a traveler engaged in mixed travel must be paid by the government since the "hatched" person is engaging only in official duty.
7. If the principal traveler on a mixed trip is accompanied by a non-hatched Department or Agency person, that person's travel expenses must be allocated on the same basis as the principal.

*/ Applicable law and regulations require "candidate" travel in both the primary and the general election campaigns to be allocated on a "hypothetical trip" basis. See 11 C.F.R. § 106.3. Additionally, 11 C.F.R. § 9004.7 provides a set of rules concerning the allocation of travel expenses for a Presidential or Vice Presidential campaign.